

## NEWSLETTER

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### UP COMING EVENTS

**Corporate Legal Counsels Forum '09 -  
Legal Aspects of Managing Contract and Subcontract Risks**

Friday, March 27, 2009

Nai Lert Park Hotel, Bangkok, Thailand

**Labor Law and HR Restructuring in the Turbulent Business Environment -  
Tax Issues in Employment and Remuneration**

Friday, April 24, 2009

Centara Hotel at CentralWorld, Bangkok, Thailand

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## 1. Capital Market Supervisory Board Extends the Period for Exceptions to the Tender Offer Requirements for Listed Companies' Share Buyback to June 2009

In late 2008 the Securities and Exchange Commission ("SEC") acting in the capacity of the Capital Market Supervisory Board issued the Notification of Capital Market Supervisory Board Re Special Directions on Acquisition of Securities for the Business Takeovers in order to Relieve the Impacts Arisen from Overseas Financial Crisis. Such Notification of the Capital Market Supervisory Board provided the exceptions to the tender offer requirements in the case where listed companies buyback the shares. The exceptions were made effective for the period of 3 months commencing from November 17, 2008. While such exceptions were beneficial to listed companies' share buyback activities, apparently the window period was too short for some other listed companies to take opportunity on these exemptions.

The SEC acting in the capacity of the Capital Market Supervisory Board issues the new Notification of Capital Market Supervisory Board Re Special Directions on Acquisition of Securities for the Business Takeovers in order to Relieve the Impacts Arisen from Overseas Financial Crisis, extending the exception period of the tender offer requirements for listed companies' shareholder in the case of share buyback until the end of June 2009.

The new Notification of Capital Market Supervisory Board will continue to exempt the tender offer requirements for the shareholder under the following conditions:

1. The share buyback causes the shareholding of any shareholder to reach 25%, 50% or 75% of the total votes;
2. Such shareholder acquires the additional shares within June 30, 2009;
3. After the acquisition of the additional shares, the votes of the total shares (including additional shares) of such shareholder would have not reached 25%, 50% or 75% of the total votes of the listed company if the listed company had not purchased back its shares; and
4. Such shareholder acquires the additional shares before the listed company registers the decrease of paid up capital by eliminating the registered shares that have been bought back by the listed company. (This is the additional condition imposed by the new Notification.)

Moreover, in the event that any share buyback of a listed company causes the shareholding of any shareholder to reach 25% of the total votes of such listed company and such shareholder acquires the additional shares within June 30, 2009 to the extent that his or her shareholding reaches 25% of the total votes of such listed company even if there were no share buyback, such person may apply for the exception (relaxation) from the Office of SEC within June 30, 2009.

The new Notification imposes the additional condition that such shareholder will be entitled to apply for the exception (relaxation) only if the shareholder acquires the additional shares and applies for the exception (relaxation) before the listed company registers the decrease of paid up capital by eliminating the registered shares that have been bought back by such listed company. The Office of SEC will grant such exception (relaxation) to such shareholder if the shareholding of such shareholder does not reach 50% of total shares of a listed company and the shareholder has received the consent from other shareholders. Upon receipt of such exception (relaxation), such shareholder will not be required to make the tender offer.

For more information, please contact us.

## INSURANCE & TAX UPDATE

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### 2. Revenue Ruling on Income Recognition of Insurance Reserves upon Merger of General and Casualty Insurance Companies

The General and Casualty Insurance Act No. 2, B.E. 2551 (2008) requires the general and casualty insurers who operate as private limited companies to convert to public limited companies within 5 years. A majority of 98 general and casualty insurers are small and medium companies. As a result, their ability to insure is limited by their capital fund. Apparently, the Office of Insurance Commission encourages more consolidations among the smaller players in this industry, which will lead to more financial stability.

The amalgamation of companies is a preferred method of merger since two existing insurance companies will be merged into the new company ( $A + B = C$ ). Moreover, the new company shall assume the rights and the liabilities of the amalgamated companies. But such amalgamation method still has some tax issue as the amalgamated companies have to recognize the remaining insurance reserves as an income on the dissolution date. But on the accounting basis such insurance reserves must be transferred to the new company because such transferred insurance reserves are still subject to the liabilities of the insurance policies that the new company takes transfer from the amalgamated companies.

The Office of Insurance Commission therefore sought the ruling from the Revenue Department on whether the new insurance company has to recognize the insurance reserves transferred by the amalgamated insurance companies as an income of the new insurance company or not as the amalgamated insurance companies have recognized such insurance reserves as their income upon amalgamation of two companies. If the new company has to recognize the reserves as its income again, the Office of Insurance Commission is of the opinion that it will be the double taxation for the new company.

The Revenue Department clarifies that upon amalgamation of two or more insurance companies the Revenue Code deems that each amalgamated company be dissolved. The amalgamated companies have to recognize the insurance reserves as their revenue. As the amalgamated companies have already recognized such insurance reserves as their income, the new company formed from the amalgamation does not have to recognize such insurance reserves as its income again.

For more information, please contact us.

#### TAX UPDATE

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### 3. The Board of Investment Names 3 More Businesses as Target Sectors Eligible for Tax Benefits under BOI Scheme

The Board of Investment names 3 more businesses under target sector category, as the following:

1. Energy saving and alternative energy related businesses;
2. High technology businesses; and
3. Environmental-friendly materials and products manufacturing.


Investors may submit investment promotion applications for these 3 target sectors, provided that the location of business must be outside Bangkok. If the investment promotion application is approved, the investor will get tax benefits of 8 year corporate income tax holiday, 50% reduction of corporate income tax for 5 years, double deduction of transportation, electricity and water supply costs, and 25% deduction from net profit for facility installation and construction costs in addition to normal depreciation capital.

For more information, please contact us.

FRIDAY, 27 MARCH 2009  
Nai Lert Park Hotel, Bangkok

# CORPORATE LEGAL COUNSELS FORUM'09

Improving roles, legal strategies,  
and updating legal issues corporate legal  
counsel need to know to tackle the volatile  
business environment in 2009



## LEGAL ASPECTS OF MANAGING CONTRACT AND SUBCONTRACT RISKS

- ✕ Key considerations for insourcing and outsourcing
- ✕ Understanding different types of contracts
- ✕ Designing critical provisions in contracts and subcontracts
- ✕ Identifying contract and subcontract risks and how to mitigate such risks
- ✕ Dealing with multiple contractors
- ✕ Practical problems in contract management

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# LABOR LAW and HR Restructuring

in the Turbulent  
Business Environment

The Industry Forum  
23-24 April 2009 @ Centara Hotel at CentralWorld

11.30 Tax issues in employment and remuneration

- Recent developments of taxation of employment
- Tax planning issues: expatriate employees vs. overseas Thai employees
- Employers' common mistakes in payroll taxes
- Understanding tax liability of a terminated employee
- Tax saving ideas: How to optimize the tax deductions/allowances and the tax exemptions available to the employees?

**Guest Speaker:** Mr. Narit Direkwattanachai, Principal  
**Narit & Associates**

### Speaker Profile

Mr. Narit Direkwattanachai is the Principal at **NARIT & Associates**, a Bangkok-based international law firm with main areas of practice in Corporate & Commercial, Mergers & Acquisitions, Tax, Real Estate, Construction and Commercial Dispute. Mr. Direkwattanachai earned an LLB (1st class honors) from **Chulalongkorn University**, an LLM (Chevening Scholar) from the **University of Cambridge**, UK and an MBA in Finance (GRSP Scholar) from the **Georgia Institute of Technology**, USA.

Having the right balance between his financial literacy and legal expertise, Mr. Direkwattanachai regularly advises publicly held companies, Thai subsidiaries of multinational corporations and foreign investors across a broad range of matters, including acquisitions of local companies, formation of joint venture companies, investment/divestment, international sales, distributorship, commercial contract tax planning, transfer pricing, cross border tax planning, remittance of profit and tax dispute.

Prior to establishing **NARIT & Associates**, Mr. Direkwattanachai worked with **Baker & McKenzie**, Bangkok office, **Baker & McKenzie**, Sydney office, and the Investment Banking Group of **DBS Bank**, Singapore. He can be reached at [narit@naritlaw.com](mailto:narit@naritlaw.com)

### GENERAL COUNSEL SERVICES

### OUTSOURCED LEGAL SERVICES AT COST SAVING, FIXED RATE

General Counsel Services arrangement is a great solution for corporate companies who do not have in-house lawyers or have a stretched legal department, but require additional legal support in the cost-effective and flexible way.

NARIT & Associates proudly presents our General Counsel Services, unique outsourced in-house general counsel legal services, a new approach to your business at more affordable rates. General Counsel Services is a unique arrangement in which for a monthly fixed retainer fee, the clients are provided with the legal services that are traditionally rendered by the in-house legal counsels.

General Counsel Services brings the best of both worlds together, namely all the benefits and comfort of having in-house legal counsel as well as outsourcing flexibility and expertise of outside law firms. Corporate clients are benefited from an unlimited access to our legal advice, raising any legal questions to us as many as they wish.

#### LAW FIRM EXPERTISE AT A FIXED FEE

We offer the expertise of traditional international law firms at a fixed fee.

#### COST SAVING

Outsourced general counsel services costs the company less than hiring a fulltime in-house legal counsel. The lower costs and the other benefits of in-house general counsel can be achieved without the need to add another (expensive) person to the company payroll with its associated concerns and overhead costs.

#### HAND-ON SUPPORT

We provide full-time support from a team of experienced legal professionals in the most cost-effective way.

#### FLEXIBILITY

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#### CONTINUITY

Your outsourced general counsel from us is well acquainted with your business issues facing your company and consequently provides focused, relevant, practical, and cost effective legal advice that is becoming increasingly crucial to your business.

**PART-TIME GENERAL COUNSEL**

If your legal needs do not justify hiring a full time in-house general counsel, all you need is part-time legal advice on various business issues, our General Counsel Services can fill the gap to satisfy your need.

**EASY BUDGETING**

You can precisely and conveniently budget for legal fees, without worrying about the meter running or incurring additional costs.

**IN-HOUSE ATTORNEY'S BENEFITS**

You have the advantages of an in-house attorney at a reasonable monthly rate.

**AVAILABILITY OF TEMPORARY SERVICES**

Temporary general counsel services are also available to fill in the gap when your permanent general counsel takes her maternity leave, is on prolonged sick leave or leaves a job.

**TAILOR MADE**

We structure our general counsel scheme based entirely on your particular needs. So your retainer scheme or project based scheme is tailor made to meet your particular needs.

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- Notarial Services**
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- Real Estate**
- Work Permit & Immigration**

Please contact our attorney, should you require any legal assistance.

# NARIT & ASSOCIATES

Attorneys at Law

LEGAL AND TAX SERVICES

BANGKOK, THAILAND

## FIRM PROFILE

NARIT & ASSOCIATES is international law firm based in Bangkok, Thailand with principal areas of practice on Corporate & Commercial, Mergers & Acquisitions, Tax Planning, Litigation & Dispute Resolution, Business Contracts/Agreements, Real Estate & Construction, Insurance and Employment.

We have experiences in advising our clients, from publicly held companies, Thai subsidiaries of multinational corporations to foreign and private investors, across a broad range of matters, including acquisitions of local companies, formation of joint venture companies, international sales, investment/divestment, distributorship, commercial contract tax planning, cross border tax planning, transfer pricing, remittance of profit and tax dispute.

As we aspire to be a fast growing legal service provider in Thailand, we are pleased to offer our high quality legal services at a very competitive rate, as compared to those of other international law firms.

Contact our lawyer to find out how we can help you.

## AREAS OF PRACTICE

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General Counsel Services for Corporate Clients  
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Mergers & Acquisitions  
Private Clients  
Real Estate  
Tax  
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For more detailed information,  
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